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# *The* **NORTH CAROLINA REGISTER**

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**ISSUE DATE: DECEMBER 15, 1989**

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# INFORMATION ABOUT THE NORTH CAROLINA REGISTER AND ADMINISTRATIVE CODE

## NORTH CAROLINA REGISTER

The *North Carolina Register* is published bi-monthly and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed, administrative rules and amendments filed under Chapter 150B must be published in the Register. The Register will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions. The *North Carolina Register* is available by yearly subscription at a cost of one hundred and five dollars (\$105.00) for 24 issues.

Requests for subscriptions to the *North Carolina Register* should be directed to the Office of Administrative Hearings, P. O. Drawer 11666, Raleigh, N. C. 27604, Attn: *Subscriptions*.

## ADOPTION, AMENDMENT, AND REPEAL OF RULES

An agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing; a statement of how public comments may be submitted to the agency either at the hearing or otherwise; the text of the proposed rule or amendment; a reference to the Statutory Authority for the action and the proposed effective date.

The Director of the Office of Administrative Hearings has authority to publish a summary, rather than the full text, of any **amendment** which is considered to be too lengthy. In such case, the full text of the rule containing the proposed amendment will be available for public inspection at the Rules Division of the Office of Administrative Hearings and at the office of the promulgating agency.

Unless a specific statute provides otherwise, at least 30 days must elapse following publication of the proposal in the *North Carolina Register* before the agency may conduct the required public hearing and take action on the proposed adoption, amendment or repeal.

When final action is taken, the promulgating agency must file any adopted or amended rule for approval by the Administrative Rules Review Commission. Upon approval of ARRC, the adopted or amended rule must be filed with the Office of Administrative Hearings. If it differs substantially from the proposed form published as part of the public notice, upon request by the agency, the adopted version will again be published in the *North Carolina Register*.

A rule, or amended rule cannot become effective earlier than the first day of the second calendar month after the adoption is filed with the Office of Administrative Hearings for publication in the NCAC.

Proposed action on rules may be withdrawn by the promulgating agency at any time before final action is taken by the agency.

## TEMPORARY RULES

Under certain conditions of an emergency nature, some agencies may issue temporary rules. A temporary rule becomes effective when adopted and remains in

effect for the period specified in the rule or 180 days whichever is less. An agency adopting a temporary rule must begin normal rule-making procedures on the permanent rule at the same time the temporary rule is adopted.

## NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 38 occupational licensing boards. The NCAC comprises approximately 15,000 letter size single spaced pages of material of which approximately 35% is changed annually. Compilation and publication of the NCAC is mandated by G.S. 150B-63(b).

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards.

The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 1 page or less, plus fifteen cents (\$0.15) per each additional page.
- (2) The full publication consists of 52 volumes totaling in excess of 15,000 pages. It is supplemented monthly with replacement pages. A one year subscription to the full publication including supplements can be purchased for seven hundred and fifty dollars (\$750.00). Individual volumes may also be purchased with supplement service. Renewal subscriptions for supplements to the initial publication available.

Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.

## NOTE

The foregoing is a generalized statement of the procedures to be followed. For specific statutory language it is suggested that Articles 2 and 5 of Chapter 150B of the General Statutes be examined carefully.

## CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue number and date. **1:1 NCR 101-201, April 1, 1986** refers to Volume 1, Issue 1, pages 101 through 201 of the *North Carolina Register* issued on April 1, 1986.

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# NORTH CAROLINA REGISTER



*Office of Administrative Hearings  
P. O. Drawer 11666  
Raleigh, NC 27604  
(919) 733 - 2678*

Julian Mann, III  
*Director*  
James R. Scarcella Sr.,  
*Deputy Director*  
Molly Masich,  
*Director APA Services*

**Staff:**  
Ruby Creech,  
*Publications Coordinator*  
Teresa Kilpatrick,  
*Editorial Assistant*  
Jean Shirley,  
*Editorial Assistant*

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**NORTH CAROLINA REGISTER**  
*Publication Schedule*  
*(January 1990 - December 1991)*

Issue Date	Last Day for Filing	Last Day for Electronic Filing	Earliest Date for Public Hearing & Adoption by Agency	* Earliest Effective Date
*****	*****	*****	*****	*****
01/02/90	12/07/89	12/14/89	02/01/90	05/01/90
01/16/90	12/20/89	12/29/89	02/15/90	05/01/90
02/01/90	01/10/90	01/18/90	03/03/90	06/01/90
02/15/90	01/25/90	02/01/90	03/17/90	06/01/90
03/01/90	02/08/90	02/15/90	03/31/90	07/01/90
03/15/90	02/22/90	03/01/90	04/14/90	07/01/90
04/02/90	03/12/90	03/19/90	05/02/90	08/01/90
05/01/90	04/09/90	04/17/90	05/31/90	09/01/90
06/01/90	05/10/90	05/17/90	07/01/90	10/01/90
07/02/90	06/11/90	06/18/90	08/01/90	11/01/90
08/01/90	07/11/90	07/18/90	08/31/90	12/01/90
09/04/90	08/13/90	08/20/90	10/04/90	01/01/91
10/01/90	09/10/90	09/17/90	10/31/90	02/01/91
11/01/90	10/11/90	10/18/90	11/30/90	03/01/91
12/03/90	11/08/90	11/15/90	01/02/91	04/01/91
01/02/91	12/07/90	12/14/90	02/01/91	05/01/91
02/01/91	01/10/91	01/18/91	03/03/91	06/01/91
03/01/91	02/08/91	02/15/91	03/31/91	07/01/91
04/01/91	03/11/91	03/18/91	05/01/91	08/01/91
05/01/91	04/10/91	04/17/91	05/31/91	09/01/91
06/03/91	05/10/91	05/17/91	07/03/91	10/01/91
07/01/91	06/10/91	06/17/91	07/31/91	11/01/91
08/01/91	07/11/91	07/18/91	08/31/91	12/01/91
09/03/91	08/12/91	08/19/91	10/03/91	01/01/92
10/01/91	09/10/91	09/17/91	10/31/91	02/01/92
11/01/91	10/11/91	10/18/91	12/01/91	03/01/92
12/02/91	11/07/91	11/14/91	01/01/92	04/01/92

\* The "Earliest Effective Date" is computed assuming that the public hearing and adoption occur in the calendar month immediately following the "Issue Date", that the agency files the rule with The Administrative Rules Review Commission by the 20th of the same calendar month and that ARRC approves the rule at the next calendar month meeting.



## VOTING RIGHTS ACT FINAL DECISION LETTER

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*[G.S. 120-30.9H, effective July 16, 1986, requires that all letters and other documents issued by the Attorney General of the United States in which a final decision is made concerning a "change affecting voting" under Section 5 of the Voting Rights Act of 1965 be published in the North Carolina Register.]*

U.S. Department of Justice  
Civil Rights Division

JPT:LLT:KLB:gmh  
DJ 166-012-3  
Z2218-2219  
Z4318

Voting Section  
P.O. Box 66128  
Washington, D.C. 20035-6128

November 20, 1989

DeWitt F. McCarley, Esq.  
City Attorney  
P.O. Box 7207  
Greenville, North Carolina 27835-7207

Dear Mr. McCarley:

This refers to the two annexations [Ordinance Nos. 2046 and 2047 (1989)] and the designation of the annexed areas to single-member districts for the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c. We received your submission on September 21, 1989.

The Attorney General does not interpose any objections to the changes in question. However, we feel a responsibility to point out that Section 5 of the Voting Rights Act expressly provides that the failure of the Attorney General to object does not bar any subsequent judicial action to enjoin the enforcement of such changes. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Sincerely,

James P. Turner  
Acting Assistant Attorney General  
Civil Rights Division

By:

Barry H. Weinberg  
Acting Chief, Voting Section

**TITLE 4 - DEPARTMENT OF ECONOMIC  
AND COMMUNITY DEVELOPMENT**

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Community Assistance, N.C. Department of Economic and Community Development intends to amend rule(s) cited as 4 NCAC 19L .0103, .0401, .0403 - .0404, .0407, .0907, .1302 - .1303.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 2:00 p.m. on January 16, 1990 at Conference Room, Suite 250, Methodist Building, 1307 Glenwood Avenue, Raleigh, N.C. 27605.*

*Comment Procedures: Oral or written comments can be made at the public hearing. Written comments will be accepted until February 14, 1990. Written comments should be sent to Bob Chandler, Director, 1307 Glenwood Avenue, Suite 250, Raleigh, N.C. 27605.*

**CHAPTER 19 - DIVISION OF COMMUNITY  
ASSISTANCE**

**SUBCHAPTER 19L - NORTH CAROLINA  
COMMUNITY DEVELOPMENT BLOCK GRANT  
PROGRAM**

**SECTION .0100 - GENERAL PROVISIONS**

**.0103 DEFINITIONS**

(l) "~~NRCD~~" "Department" means the North Carolina Department of ~~Natural Resources~~ Economic and Community Development.

(m) "Project" means one or more activities addressing either:

(4) ~~demonstration~~ development of new and innovative approaches to housing, or

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

**SECTION .0400 - DISTRIBUTION OF FUNDS**

**.0401 GENERAL**

(c) Applicants can apply for funding under the grant categories of Community Revitalization, Economic Development, Development Planning, Housing ~~Demonstration~~ Development, Interim Assistance, and Urgent Needs. Applicants shall not apply for Contingency funding. Contingency awards will be made to eligible applicants in

Community Revitalization, Economic Development, Housing ~~Demonstration~~ Development, and Development Planning categories.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

**.0403 SIZE AND USE OF GRANTS MADE  
TO RECIPIENTS**

(a) There is no minimum grant amount which applicants may request or be awarded. Grant awards made to any one recipient shall not exceed the following amount in each grant category: Community Revitalization - six hundred thousand dollars (\$600,000); Economic Development - six hundred thousand dollars (\$600,000); Development Planning - five thousand dollars (\$5,000); Housing ~~Demonstration~~ Development - two hundred fifty thousand dollars (\$250,000) or funds available; Urgent Needs - seven hundred fifty thousand dollars (\$750,000); Interim Assistance - seven hundred fifty thousand dollars (\$750,000) for projects designated to be completed within 36 months from the award date, and four million dollars (\$4,000,000) for projects designated to be completed within 18 months from the award date; and Contingency - six hundred thousand dollars (\$600,000). Applicants shall not have a project or combination of projects, under active consideration for funding which exceeds seven hundred fifty thousand dollars (\$750,000), except for Interim Assistance and Urgent Needs projects.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

**.0404 GRANT CATEGORY ALLOCATION**

Each program year funds will be reserved for each grant category. ~~No more than three percent of the state's Community Development Block Grant funds to be allocated to local governments will be awarded for Housing Demonstration and Development Planning grants. Funds awarded to local governments will be reserved for each grant category as follows: Up to five percent of the grant will be awarded for Housing Development and Development Planning grants, of which a maximum of sixty thousand dollars (\$60,000) may be awarded for Development Planning grants. In addition, up to five percent will be set aside for Urgent Needs grants and Contingency awards and up to twenty percent will be set aside for Economic Development grants each year. The remaining funds will be distributed by NRCD the Division of Community Assistance to Community Revitalization grant applications.~~

Awards will be made for Interim Assistance from funds available in the state's allocation in accordance with Rule .1504 of this Subchapter.

Up to one million dollars (\$1,000,000) of funds that are recaptured from previous CDBG grants by the state shall be used to make additional grants in the Housing Development category.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.491.*

#### .0407 GENERAL APPLICATION REQUIREMENTS

(a) Local governments are required to submit applications in a manner prescribed by ~~NRCD~~ the Department in order to be considered for funding. Selection of applications for funding will be based primarily on information contained in the application; thus applications must contain sufficient information for ~~NRCD~~ the Department to rate them against the selection criteria. All applicants are required to address their projects to one of the following grant categories: Community Revitalization, Economic Development, Development Planning, Housing ~~Demonstration~~, Development, Interim Assistance, or Urgent Needs. Applicants may apply in more than one grant category, apply for several projects in the same grant category, and have more than one project approved, providing the total grant application and award does not exceed the maximum limits described in Paragraphs (a) and (b) of Rule .0403 of this Section. Applicants shall submit an application that describes each project in detail.

*Authority G.S. 143-323; 143B-10; 42 U.S.C.A. 5304(a); 24 C.F.R. 570.489.*

#### SECTION .0900 - GRANT ADMINISTRATION

##### .0907 PROGRAM INCOME

(f) Program Income generated by grants made in 1986 or afterwards shall be returned to ~~NRCD~~ the Department except when:

- (1) the recipient shall propose at the time of application or at the time the program income is anticipated, ~~propose~~ a use or uses for the projected program income, and
- (2) ~~NRCD~~ the Department determines that, at the time of the proposal, that application, the ~~proposed~~ use of the projected program income meets federal requirements prohibiting the state from recapturing the program income; or

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489; 24 C.F.R. 570.494; 42 U.S.C.A. 5304(b)(4).*

#### SECTION .1300 - HOUSING DEVELOPMENT PROJECTS

##### .1302 ELIGIBILITY REQUIREMENTS

(a) Applications for Housing ~~Demonstration~~ Development funds must show that:

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

##### .1303 SELECTION CRITERIA

Selection criteria will be announced by ~~NRCD~~ the Department 60 days prior to accepting applications for this category. ~~NRCD~~ The Department may accept applications for ~~demonstration~~ development grants periodically.

*Authority G.S. 143-323; 143B-10; 24 C.F.R. 570.489.*

#### TITLE 10 - DEPARTMENT OF HUMAN RESOURCES

*Notice is hereby given in accordance with G.S. 150B-12 that the Division of Aging intends to adopt rule(s) cited as 10 NCAC 22G .0906.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on January 16, 1990 at 693 Palmer Drive, Room 127, Raleigh, N.C. 27603.*

*Comment Procedures: Written comments concerning the proposed regulation must be submitted by January 16, 1990 to: Gary H. Cyrus, Division of Aging, 693 Palmer Drive, Raleigh, N.C. 27603. Oral presentations may be presented at the hearing. Any person may request information or copies of the proposed regulation by writing Mr. Cyrus at the aforementioned address or by calling him at 733-8399.*

#### CHAPTER 22 - AGING

##### SUBCHAPTER 22G - PROGRAM OPERATIONS

##### SECTION .0900 - ALLOCATIONS

##### .0906 INTRASTATE FUNDING FORMULA

(a) The intrastate funding formula shall apply to funding allocated to Area Agencies on Aging under the Older Americans Act, 20 U.S.C. 1008a



et seq and 45 C.F.R. 1321.37, which are adopted by reference pursuant to G.S. 150B-14(c), and under state legislation.

(b) Each Area Agency on Aging shall receive an equal base amount from the total allocation. Of remaining federal and state funds, a proportional share for each Area Agency will be determined as follows:

- (1) Fifty percent of the funds will be distributed to areas based on the area's proportion of the state's population 60 years of age and older.
- (2) Thirty percent of the funds will be distributed to areas based on the area's proportion of the state's population 60 years of age and older who live at or below the federally defined poverty level.
- (3) Ten percent of the funds will be distributed to areas based on the area's proportion of the state's minority population 60 years of age and older.
- (4) Ten percent of the funds will be distributed to areas based on the area's proportion of the state's rural population 60 years of age and older as defined by the Bureau of the Census.

Authority G.S. 143B-10(c); 143B-137; 20 U.S.C. 1008a et seq; 45 C.F.R. 1321.57.

## TITLE 12 - DEPARTMENT OF JUSTICE

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Criminal Justice Education and Training Standards Commission intends to amend rule(s) cited as 12 NCAC 9A .0201 - .0206; 9B .0101; 9C .0306 - .0307, .0309 and intends to adopt rule(s) cited as 12 NCAC 9C .0310.*

*The proposed effective date of this action is July 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on February 9, 1990 at Hearing Room of the Alcoholic Beverage Control Commission Building, 3322 Old Garner Road, Raleigh, North Carolina.*

*Comment Procedures: Any person interested in these rules may present oral or written comments relevant to the proposed action at the Public Rule-Making Hearing. Written statements not presented at the Hearing should be directed to the undersigned. The proposed rules are available for public inspection and copies may be obtained at the following address:*

*Criminal Justice Standards Division  
North Carolina Department of Justice  
1 West Morgan Street  
Room 123, Court of Appeals Building  
Post Office Drawer 149  
Raleigh, North Carolina 27602*

## CHAPTER 9 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SUBCHAPTER 9A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

#### SECTION .0200 - ENFORCEMENT OF RULES

##### .0201 INVESTIGATION OF VIOLATION OF RULES

(a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of these Rules, the commission may take action to correct the violation and to ensure that similar violations do not occur.

(b) Before taking action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Standards Committee of the commission.

(c) The Standards Committee shall convene prior to the next regular meeting of the commission, shall consider the report of the Standards Division, and shall prepare its recommended disposition of the case for the full commission.

(d) The commission shall consider fully the recommendations of the Standards Committee regarding alleged violations of these Rules. The commission may:

- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
- (2) request the Attorney General to authorize an investigation by the State Bureau of Investigation of the alleged violation;
- (3) direct the Standards Committee to conduct an administrative hearing in the matter, pursuant to Rule .0107 of this Subchapter and ~~22 NCAC Subchapter 2C; 26 NCAC Chapter 3;~~  
or
- (4) impose sanctions against the violator pursuant to ~~Rules .0202 or .0203 of this Section~~ Section .0200 of these rules.

Statutory Authority G. S. 17C-6; 17C-10.

##### .0202 SANCTIONS FOR VIOLATIONS BY AGENCIES OR SCHOOLS



If the commission finds that a violation has been committed by an agency or school, the commission may:

- (1) issue an oral warning and request for compliance;
- (2) issue a written warning and request for compliance;
- (3) issue an official written reprimand;
- (4) suspend and refuse to grant accreditation to any school or program or course of instruction until proper corrective measures have been taken to bring the agency or school into compliance with these Rules and verification of such compliance has been made by the commission; or
- (5) suspend and refuse to grant accreditation to any school or program or course of instruction for a specific period of time not to exceed ~~one year~~ five years.

*Statutory Authority G. S. 17C-6; 17C-10.*

**.0203 SANCTIONS FOR VIOLATIONS BY INDIVIDUALS**

(a) When any person certified by the commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the commission may take action to correct the violation and to ensure that the violation does not re-occur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual;
- (5) revoking or denying the individual's certification.

(b) ~~When any person is found to have knowingly and willfully obtained, or attempted to obtain certification by deceit, fraud, or misrepresentation, or when any person is found to have aided another in obtaining or attempting to obtain certification by means of deceit, fraud or misrepresentation, the commission shall for both the principal and the person aiding the principal permanently revoke or deny certification.~~

(c) ~~A person who has had his certification suspended or revoked may not remain employed or appointed as a criminal justice officer. A person may not exercise the authority of a criminal justice officer during a period of suspension or revocation.~~

~~(d) A person who has been denied certification may not be employed or appointed as a criminal justice officer or exercise the authority of a criminal justice officer.~~

*Statutory Authority G. S. 17C-6; 17C-10.*

**.0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION**

(a) The commission shall revoke the certification of a criminal justice officer when the commission finds that the officer has committed or been convicted of:

- (1) a felony; or
- (2) a crime for which the authorized punishment included imprisonment for more than two years.

(b) The commission may suspend, revoke, or deny the certification of a criminal justice officer when the commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain any of the minimum employment standards required by 12 NCAC 9B .0100 for the category of the officer's certification;
- (3) has committed or been convicted of:
  - (A) a crime or unlawful act defined in 12 NCAC 9A .0103 as a Class B misdemeanor; or
  - (B) four or more crimes or unlawful acts defined in 12 NCAC 9A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;
- (4) has been discharged by a criminal justice agency for commission or conviction of:
  - (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
  - (B) any other offense involving moral turpitude;
- (5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and designedly willfully, by any means of false pretense, deception, fraud, misrepresentation or cheating whatsoever, obtained or attempted to

obtain credit, training or certification from the commission;

- (8) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the commission;
- (9) ~~(8)~~ has failed to make either of the notifications as required by 12 NCAC 9B .0101(7);
- (10) ~~(9)~~ has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16;
- (11) ~~(10)~~ fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 9E;
- (12) has refused to submit to the drug screen specified in 12 NCAC 9B .0101(5);
- (13) has produced a positive result on the drug screen specified in and administered according to 12 NCAC 9B .0101(5), where the positive result cannot be explained to the commission's satisfaction;
- (14) has produced a positive result on the drug screen specified in and administered according to 12 NCAC 9B .0101(5) and 12 NCAC 9C .0306(b), where the positive result cannot be explained to the commission's satisfaction;
- (15) has produced a positive result on the drug screen specified in and administered according to 12 NCAC 9B .0101(5) and 12 NCAC 9C .0309(b), where the positive result cannot be explained to the commission's satisfaction; or
- (16) has refused to submit to a drug screen or has produced a positive result on a drug screen reported to the commission as specified in 12 NCAC 9C .0310, where the positive result cannot be explained to the commission's satisfaction.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, ~~or~~ revoked, or denied.

*Statutory Authority G.S. 17C-6; 17C-10.*

**.0205 PERIOD OF SUSPENSION;  
REVOCATION; OR DENIAL**

(a) When the commission ~~suspends~~ revokes or denies the certification of a criminal justice offi-

cer, the period of the sanction shall be permanent where the cause of sanction is:

- (1) ~~permanent where the cause of the sanction is:~~
  - (1) ~~(a)~~ commission or conviction of a felony; or
  - (2) ~~(b)~~ commission or conviction of a crime for which authorized punishment included imprisonment for more than two years; or
  - (3) ~~(c)~~ the second ~~revocation~~ suspension of an officer's certification for either any of the two causes requiring a five-year period of ~~revocation~~ suspension.
- (2) ~~(b)~~ When the commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the commission may either reduce or suspend the period of sanction under Paragraph (b) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:
  - (1) ~~(a)~~ commission or conviction of a crime other than those listed in Item (1) Paragraph (a) of this Rule; however, the commission may either reduce or suspend the period of sanction under this Item or substitute a period of probation in lieu of revocation following an administrative hearing; or
  - (2) refusal to submit to the drug screen specified in 12 NCAC 9B .0101(5); or
  - (3) production of a positive result on the drug screen specified in and administered according to 12 NCAC 9B .0101(5), 12 NCAC 9C .0306(b), or 12 NCAC 9C .0309(b), where the positive result cannot be explained to the commission's satisfaction; or
  - (4) refusal to submit to a drug screen or production of a positive result on a drug screen reported to the commission under 12 NCAC 9C .0310, where the positive result cannot be explained to the commission's satisfaction; or
  - (5) ~~(b)~~ material misrepresentation of any information required for certification or accreditation; or
  - (6) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating; or
  - (7) ~~(c)~~ failure to make either of the notifications as required by 12 NCAC 9B .0101(7); or

- (8) ~~(d)~~ removal from office under the provisions of G.S. 128-16.

~~(3)~~ (c) When the commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) ~~(a)~~ failure to meet or satisfy relevant basic training requirements; or
- (2) ~~(b)~~ failure to meet or maintain the minimum standards of employment; or
- (3) ~~(c)~~ discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) ~~(d)~~ failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 9E.

*Statutory Authority G.S. 17C-6; 17C-10.*

#### .0206 SUMMARY SUSPENSIONS

(a) The commission, by and through the Standards Committee, may summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification when, in the opinion of the Standards Committee, the public health, safety, or welfare requires this emergency action of summary suspension. The commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Standards Committee, may utilize summary suspension when:

- (1) the person has committed or been convicted of a violation of the criminal code which would require a permanent ~~suspension~~, revocation or denial of certification; or
  - (2) the certified officer fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 9E.
- (b) For the purpose of considering a summary suspension of certification, the Standards Committee may meet upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.
- (c) A summary suspension shall be effective on the date specified in the order of summary suspension or on service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings.
- (d) Upon verbal notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the

department head of the criminal justice agency or the executive officer of the institution shall take such steps as are necessary to ensure that the officer or instructor does not perform duties requiring certification by the commission.

*Statutory Authority G.S. 17C-6; 17C-10; 150B-3.*

### SUBCHAPTER 9B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

#### SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

##### .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character as determined by a thorough background investigation;
- (4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;
- (5) have been examined and certified by a licensed physician or surgeon to meet physical requirements necessary to properly fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications:
  - (a) the drug screen shall be urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other reliable initial and confirmatory tests as may, from time to time, be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
  - (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen; and
  - (c) the drugs whose use shall be tested for shall include at least cannabis, cocaine, phenylclidine (PCP), opiates and amphetamines or their metabolites; and
  - (d) the test threshold values shall be no less stringent than those values as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs; and
  - (e) the test conducted shall be not more than 60 days old, calculated from the time



when the laboratory reports the results; and

- (f) the laboratory conducting the test must be certified for federal workplace drug testing programs, and must adhere to applicable federal rules, regulations and guidelines pertaining to the handling, testing, storage and preservation of samples, except that individual agencies may specify which drugs are to be tested for an establish threshold values in accordance with the guidelines as set forth in Subparagraphs (c) and (d) of this Rule.

**Note:** Although not presently required by these Rules, the commission recommends that every candidate for a position as a criminal justice officer be examined by a licensed psychiatrist or clinical psychologist prior to employment, or be administered a psychological evaluation test battery to determine his mental and emotional suitability to perform the duties of an officer.

- (6) have been interviewed personally by the department head or his representative or representatives, to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;
- (7) notify the Standards Division of all criminal offenses which the officer pleads no contest to, pleads guilty to or is found guilty of. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense where the maximum punishment allowable by law is 60 days or less. The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case was handled and the date of the conviction. The notifications required under this Subparagraph must be received by the Standards Division within 30 days of the date the case was disposed of in court.

The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the commission and shall also apply to all applications for certification.

Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's conviction(s), shall also notify the Standards Division of

all criminal convictions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, is sufficient notice for compliance with this Subparagraph.

*Statutory Authority G.S. 17C-6; 17C-10.*

## SUBCHAPTER 9C - ADMINISTRATION OF CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

### SECTION .0300 - CERTIFICATION OF CRIMINAL JUSTICE OFFICERS

#### .0306 LATERAL TRANSFER OF LAW ENFORCEMENT OFFICERS

(a) A law enforcement officer with general certification may transfer from one law enforcement agency to another law enforcement agency with less than a 12 month break in law enforcement service. Prior to employing the officer, the employing agency shall:

- (1) verify the certification of the officer with the Standards Division.
- (2) submit an up-to-date fingerprint check in the same manner as prescribed for non-certified new applicants. No certification will be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension of certification is authorized.
- (3) advise the officer that he will be serving under a probationary appointment with the agency for one year.
- (4) notify the commission, by submitting a Report of Appointment, that the officer is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, the law enforcement officer shall:

- (1) complete a Medical History Statement Form within 120 days prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 9B .0104 within 120 days prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the officer's permanent personnel file; ~~and~~
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 9B .0101(5); and



- (5) ~~(4)~~ submit a copy of the commission's annual in-service training report form to the employing agency for placement in the officer's permanent personnel file when the duty and off duty weapon(s) remain the same as those previously used to qualify. Such in-service training compliance must have occurred within the 12 month period preceding transfer; or

- (6) ~~(5)~~ satisfactorily complete the employing agency's in-service firearms training program as prescribed in Rules 9E .0105 and 9E .0106.

(c) Officers previously certified who were not previously required to meet the educational or basic training requirements are not required to meet such requirements when laterally transferring to another agency with less than a 12-month break in law enforcement service.

*Statutory Authority G.S. 17C-6; 17C-10.*

#### **.0307 AGENCY RETENTION OF RECORDS OF CERTIFICATION**

Each agency shall place in personnel files the official notification from the commission of either probationary or general certification for each criminal justice officer employed or appointed by the agency. Such files shall be available for examination at any reasonable time by representatives of the commission for the purpose of verifying compliance with these Rules. The personnel files shall also contain:

- (1) the officer's Personal History Statement;
- (2) the officer's Medical History Statement and Medical Examination Report;
- (3) documentation of the officer's drug screening results;
- (4) ~~(3)~~ a written summary of the Background Investigation conducted on the officer;
- (5) ~~(4)~~ a written summary of the officer's Qualifications Appraisal Interview;
- (6) ~~(5)~~ documentation of the officer's educational achievements;
- (7) ~~(6)~~ documentation of all criminal justice training completed by the officer;
- (8) ~~(7)~~ the results of the officer's fingerprint record check; and
- (9) ~~(8)~~ for the law enforcement officer, documentation on a commission-approved form that the officer has completed the minimum in-service training as required.

*Statutory Authority G.S. 17C-2; 17C-6.*

#### **.0309 LATERAL TRANSFER OF LOCAL CONFINEMENT PERSONNEL**

(a) An officer, supervisor or administrator with general certification may transfer from one local confinement facility to another local confinement facility, or may transfer from one county or district confinement facility to another county or district confinement facility with less than a 12-month break in service. Prior to employing the individual, the employing agency shall:

- (1) verify the certification of the individual with the Standards Division;
- (2) submit an up-to-date fingerprint check in the same manner as prescribed for non-certified new applicants; no certification will be transferred if the holder has been convicted since initial certification of any offense for which revocation or suspension or certification is authorized;
- (3) advise the individual that he will be serving under a probationary appointment with the agency for one year;
- (4) notify the commission, by submitting a Report of Appointment, that the individual is being employed and stating the date on which employment will commence.

(b) Prior to transfer of certification, local confinement personnel shall:

- (1) complete a Medical History Statement Form within 120 days prior to the transfer to the employing agency;
- (2) submit to examination by a physician licensed to practice medicine in North Carolina in the same manner prescribed for non-certified new applicants in 12 NCAC 9B .0104 within 120 days prior to the transfer to the employing agency;
- (3) submit results of the physical examination to the employing agency for placement in the individual's permanent personnel file; and
- (4) produce a negative result on a drug screen administered according to the specifications outlined in 12 NCAC 9B .0101(5).

(c) Local confinement personnel previously certified who were not previously required to meet the educational or basic training requirements are not required to meet such requirements when laterally transferring to another agency with less than a 12-month break in service.

*Statutory Authority G.S. 17C-2; 17C-6; 17C-10.*

#### **.0310 AGENCY REPORTING OF DRUG SCREENING RESULTS**

(a) Each agency shall report in writing to the Criminal Justice Standards Division all refusals and all positive results of drug screening obtained from applicants and lateral transfers pursuant to

12 NCAC 9B .0101(5) unless the positive result has been explained to the satisfaction of the agency's medical review officer who shall be a licensed physician.

(b) Each agency, if it conducts a drug screen for in-service officers, shall report to the Criminal Justice Standards Division to the extent the drug screen conducted conforms to 12 NCAC 9B .0101(5)(a), (b), (c), (d), and (f).

(c) For reporting purposes, a result will be considered "positive" only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs.

Statutory Authority G.S. 17C-6; 17C-10.

**TITLE 15A - DEPARTMENT OF  
ENVIRONMENT, HEALTH, AND  
NATURAL RESOURCES**

*Notice is hereby given in accordance with G.S. 150B-12 that the Environmental Management Commission intends to amend rule cited as 15A NCAC 2B .0310.*

*The proposed effective date of this action is June 1, 1990.*

*The public hearing will be conducted at 7:00 p.m. on January 23, 1990 at Courtroom A, Richmond County Courthouse, Franklin Street, Rockingham, NC.*

*Comment Procedures: All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within thirty (30) days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Suzanne H. Keen, Division of Environmental Management, P.O. Box 27687, Raleigh, NC 27611, (919) 733-5083.*

**CHAPTER 2 - ENVIRONMENTAL  
MANAGEMENT**

**SUBCHAPTER 2B - SURFACE WATER  
STANDARDS: MONITORING**

**SECTION .0300 - ASSIGNMENT OF STREAM  
CLASSIFICATIONS**

**.0310 LUMBER RIVER BASIN**

(c) The Lumber River Basin Schedule of Classifications and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) December 13, 1979;
- (3) September 14, 1980;
- (4) April 12, 1981;
- (5) April 1, 1982;
- (6) February 1, 1986;
- (7) June 1, 1990.

(d) The Schedule of Classifications and Water Quality Standards for the Lumber River Basin was amended effective June 1, 1990 by the reclassification of Naked Creek (Index No. 14-2-6) from source to Drowning Creek including all tributaries from Class WS-III to Class WS-III ORW.

Statutory Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the N.C. Marine Fisheries Commission intends to amend rule(s) cited as 15A NCAC 3B .0105 and .0306.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 7:30 p.m. on January 17, 1990 at Carteret County Courthouse, Superior Courtroom, Beaufort, NC and at 7:30 p.m. on January 18, 1990 at New Hanover County Courthouse, Room 302, Wilmington, NC. MFC Business Session will be at the Holiday Inn, Wrightsville Beach, NC on January 19 and 20, 1990.*

*Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than January 20, 1990.*

**CHAPTER 3 - MARINE FISHERIES**

**SUBCHAPTER 3B - FISHERIES REGULATIONS  
FOR COASTAL WATERS**

**SECTION .0100 - GENERAL REGULATIONS**

**.0105 LEGAL SIZES AND CREEL LIMITS**

(a) Crab minimum size and tolerance limits are presented in 15A NCAC 3B .0800.

(b) Clam minimum size and creel limits are presented in 15A NCAC 3B .0900.

(c) Sea scallop minimum size and tolerance limits are presented in 15A NCAC 3B .1005.

(d) Oyster minimum size, creel, and tolerance limits are presented in 15A NCAC 3B .1100.

(e) The lobster minimum size limit is presented in 15A NCAC 3B .1200.

(f) Striped bass legal sizes and creel limits are presented in 15A NCAC 3B .1500 and 3F .0100.

(g) Red Drum:

(1) It is unlawful to take or possess more than two red drum exceeding 32 inches in length in any one day.

(2) It is unlawful to possess red drum less than 14 inches in length.

(3) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(4) The Fisheries Director, may by proclamation impose any or all of the following additional restrictions on the taking of red drum:

(A) Specify areas.

(B) Specify seasons.

(C) Specify quantity.

(D) Specify means/method.

(E) Specify size.

(h) It is unlawful to land or possess aboard a vessel any striped bass, red drum, spotted seatrout or flounder mutilated to the extent that accurate length measurements cannot be made.

(i) It is unlawful for individuals claiming exemption from the oyster, scallop and clam license required by G.S. 113-154(a) to take or possess more than the quantities specified in G.S. 113-152(f).

(j) It is unlawful to possess flounder less than 13 inches in length.

(k) It is unlawful to possess spotted seatrout (speckled trout) less than 12 inches in length.

(l) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more than 3,500 pounds of Spanish or King Mackerel, in the aggregate, in any one day. The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of Spanish and/or King Mackerel:

(1) Specify areas.

(2) Specify seasons.

(3) Specify quantity.

(4) Specify means/method.

(5) Specify size.

Any proclamation prepared under this authority must be approved by the Marine Fisheries Commission prior to issuance.

(m) Inland game fish, except spotted sea trout, taken incidental to any licensed commercial fishing operation may be retained to the extent permitted by regulations of the Wildlife Resources Commission.

(n) The Fisheries Director may, by proclamation, until September 1, 1991, impose any or all of the following restrictions in the shark fishery and in the fishery for species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region:

(1) Specify size.

(2) Specify seasons.

(3) Specify areas.

(4) Specify quantity.

(5) Specify means/method.

(6) Require submission of statistical and biological data.

*Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.*

#### SECTION .0300 - NET REGULATIONS: GENERAL

##### .0306 PURSE SEINES AND PURSE GILL NETS

(a) It is unlawful to use purse seines except for the taking of menhaden or Atlantic thread herring. It is unlawful to land from a vessel licensed for menhaden fishing foodfish in excess of one percent of the total amount of fish on board, or to land foodfish from any vessel taking fish with the aid of a purse seine. In determining whether the portion of foodfish exceeds one percent of the total fish on board, the Fisheries Director or his agents are authorized and empowered to grade any portion of the total catch on board. In selecting the size of the portion for the determination of the amount of foodfish present, the portion shall be no less than an amount required to fill a standard five-gallon container for each 100,000 fish on board.

~~(b) It is unlawful to possess menhaden or Atlantic thread herring taken with a purse seine except during the open season from May 15 through January 15, except that the open season in Core Sound is from April 1 through January 15. Menhaden and Atlantic thread herring may be taken at any time with a purse seine from beyond one mile of shore in the Atlantic Ocean and transported to port except as provided in Paragraphs (c) and (d) of this Rule.~~



(c) It is unlawful to take menhaden or Atlantic thread herring by use of a purse seine between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.

(d) It is unlawful to take menhaden or Atlantic thread herring by use of a purse seine between the hours of sunrise and sunset on the following official holidays:

- (1) Memorial Day;
- (2) Fourth of July, when the Fourth of July falls on any calendar day between sunrise Friday and sunset Monday;
- (3) Labor Day.

(e) It is unlawful to use a purse seine to take menhaden or Atlantic thread herring in the internal coastal waters, except in the following waters: Pamlico Sound, Pamlico River east of a line from Wades Point to Intracoastal Waterway Marker No. 4 at the mouth of Goose Creek; Neuse River east of a line from Wilkinson Point to Cherry Point; Adams Creek; Core Sound and its tributaries; Back Sound; the Straits; North River; Newport River; and Bogue Sound.

(f) It is unlawful to take menhaden or Atlantic thread herring with a purse seine from the Atlantic Ocean within an area described in 15A NCAC 3G .0004.

(b) It is unlawful to take menhaden or Atlantic thread herring with a purse seine in violation of any of the following limitations:

- (1) Any proclamation issued by the Fisheries Director. The Fisheries Director may, by proclamation, close any of the coastal fishing waters that are open under this Rule and may impose any or all of the following restrictions on areas which remain open:
  - (A) Specify means and methods by area which may be employed in the taking;
  - (B) Limit the quantity; and
  - (C) Require submission of statistical and biological data.
- (2) Between sunset on any Friday and sunrise of the following Monday from the Friday of the Memorial Day weekend through sunset on Labor Day each year.
- (3) Between the hours of sunrise and sunset on the following holidays:
  - (A) Memorial Day;
  - (B) Fourth of July, when the Fourth of July falls on any calendar day between sunrise Friday and sunset Monday;
  - (C) Labor Day.
- (4) Between January 16 and March 31 in internal waters and in the Atlantic Ocean within one mile of shore.

(5) In internal waters except in:

- (A) Pamlico Sound,
- (B) Pamlico River east of a line from Wades Point to IWW Marker No. 1 at the mouth of Goose Creek,
- (C) Neuse River east of a line from Wilkinson Point to Cherry Point,
- (D) Adams Creek,
- (E) Core Sound and its tributaries,
- (F) Back Sound,
- (G) The Straits,
- (H) North River,
- (I) Newport River, and
- (J) Bogue Sound.

(6) In the Atlantic Ocean within the area described in 15A NCAC 3G .0004.

(c) (g) When a fish spill occurs, the responsible menhaden fishing company shall:

- (1) Immediately notify the office of the Fisheries Director of the North Carolina Division of Marine Fisheries of such spill, and
- (2) Report to the Fisheries Director of the North Carolina Division of Marine Fisheries in writing on the circumstances associated with each spill and costs of its clean-up.

(d) (h) It is unlawful to have a purse gill net on board a vessel when taking or landing Spanish or King Mackerel.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

\*\*\*\*\*

Notice is hereby given in accordance with G.S. 150B-12 that the EHNR - Land Resources intends to amend rule(s) cited as 15A NCAC 4A .0005; 4B .0006 - .0007, .0009 - .0010, .0016, .0018, .0020; 4C .0007; repeal rule(s) cited as 15A NCAC 4B .0017; and adopt rule(s) cited as 15A NCAC 4B .0024 - .0025; 4D .0003.

The proposed effective date of this action is May 1, 1990.

The public hearing will be conducted at:

January 17, 1990  
7:00 p.m.  
Bldg. 2, College Union Bldg.  
Lenoir Community College  
Hwy 70  
Kinston, N.C.



January 19, 1990

1:00 p.m.

Hearing Rm., Archdale Bldg.

512 N. Salisbury St.

Raleigh, N.C.

January 22, 1990

7:00 p.m.

Auditorium - Main Bldg.

Catawba Valley Tech. Inst.

Hwy 70

Hickory, N.C.

**Comment Procedures:** All persons interested in this matter are invited to attend. Comments, statements, data and other information may be submitted in writing prior to, during, or within ten days after the hearing or may be presented orally at the hearing. Oral statements may be limited at the discretion of the hearing officer. Submittal of written copies of oral statements is encouraged. For more information, contact Mell Nevils, Division of Land Resources, P.O. Box 27687, Raleigh, N.C. 27611 (919) 733-4574.

## CHAPTER 4 - SEDIMENTATION CONTROL

### SUBCHAPTER 4A - SEDIMENTATION CONTROL COMMISSION ORGANIZATION

#### .0005 DEFINITIONS

As used in this Chapter, the following terms shall have these meanings:

- (22) "Discharge Point" means that point at which runoff leaves a tract of land.
- (23) "Completion of Construction or Development" means that no further land-disturbing activity is required on a phase of a project except that which is necessary for establishing a permanent ground cover.
- (24) "High Quality Waters" means those classified as such in 15A NCAC 2B .0101(e)(5) - General Procedures, which is incorporated herein by reference to include further amendments pursuant to G.S. 150B-14(c).
- (25) "High Quality Water (HQW) Zones" means areas in the Coastal Counties that are within 575 feet of High Quality Waters and for the remainder of the state areas that are within one mile and drain to HQW's.
- (26) "Director" means the Director of the Division of Land Resources of the Department of Environment, Health, and Natural Resources.

Statutory Authority G.S. 113A-52; 113A-54.

### SUBCHAPTER 4B - EROSION AND SEDIMENT CONTROL

#### .0006 BASIC CONTROL OBJECTIVES

An erosion and sedimentation control ~~plans~~ shall plan may be disapproved pursuant to Rule .0018 of this Subchapter if the plan fails to address the following control objectives:

Statutory Authority G.S. 113A-54(1).

#### .0007 MANDATORY STANDARDS FOR LAND-DISTURBING ACTIVITY

(b) Pursuant to G.S. 113A-57(3), provisions for a ground cover sufficient to restrain erosion must be accomplished within 30 working days or 120 calendar days following completion of construction or development, whichever period is shorter, except as provided in Rule .0024(e) of this Subchapter.

Statutory Authority G.S. 113A-54(d)(4); 113A-57; 113A-57(3)(4).

#### .0009 STORM WATER OUTLET PROTECTION

(a) ~~Intent.~~ Streambanks and channels downstream from any land disturbing activity shall be protected from accelerated erosion caused by increased velocity of runoff from the land disturbing activity.

(b) ~~Performance Standard.~~ Persons shall conduct land disturbing activity so that the post construction velocity of the ten year storm runoff in the receiving watercourse ~~at~~ to the discharge point does not exceed the greater of:

- (1) the velocity established by the table in Paragraph ~~(e)~~ (d) of this Rule; or
- (2) the velocity of the ten year storm runoff in the receiving watercourse prior to development.

If conditions (1) or (2) of this Paragraph cannot be met, then the ~~channel below~~ receiving watercourse to and including the discharge point shall be designed and constructed to withstand the expected velocity anywhere the velocity exceeds the "prior to development" velocity by ten percent.

(b) ~~(e)~~ Acceptable Management Measures. The Commission recognizes that management of storm water runoff to control downstream erosion constitutes a developing technology and consequently invites the use of innovative techniques shown to produce successful results. Alternatives include:

(c) ~~(d)~~ Exceptions. This Rule shall not apply when storm water discharge velocities will not create an erosion problem in the receiving watercourse.

(d) ~~(e)~~ The following table sets maximum permissible velocity for storm water discharges:

*Statutory Authority G.S. 113A-54(b)(c).*

**.0010 BORROW AND WASTE AREAS**

If the same person conducts the land disturbing activity and any related borrow or waste activity, the related borrow or waste activity shall constitute part of the land disturbing activity unless the borrow or waste activity is regulated under the Mining Act of 1971, or is a landfill regulated by the Division of ~~Health Services of the Department of Human Resources~~. Solid Waste Management. If the land disturbing activity and any related borrow or waste activity are not conducted by the same person, they shall be considered separate land-disturbing activities.

*Statutory Authority G.S. 74-67; 113A-54(b); 130A-166.21.*

**.0016 EXISTING UNCOVERED AREAS**

(b) The Commission or local government shall serve a notice to comply upon the landowner or other person in possession or control of the land by registered or certified mail or other means reasonably calculated to give actual notice. The notice shall state the measures needed and the time allowed for compliance. The authority serving the notice shall consider the economic feasibility, technological expertise and quantity of work required, and shall establish reasonable time limits.

*Statutory Authority G.S. 113A-54.*

**.0017 STATEMENT OF FINANCIAL RESPONSIBILITY AND OWNERSHIP (REPEALED)**

*Statutory Authority G.S. 113A-54(b).*

**.0018 APPROVAL OF PLANS**

(a) Persons conducting land-disturbing activity which covers one or more contiguous acres shall file three copies of the erosion and sedimentation control plan with the local government having jurisdiction or with the Commission if no local government has jurisdiction, at least 30-days prior to beginning such activity and shall keep another copy of the plan on file at the job site. If the Commission or local government determines, either upon review of such plan or on inspection of the job site, that a significant risk of accelerated erosion or off-site sedimentation exists, it will require a revised plan. Pending the preparation of the revised plan, work shall cease or shall continue under conditions outlined by the appropriate authority.

(b) ~~(a)~~ Commission Approval

(1) The Commission shall review plans for all land-disturbing activity over which the Commission has exclusive jurisdiction by statute and all other land-disturbing activity if no local government has jurisdiction.

(2) The Commission shall complete its review of any completed plan within 30 days of receipt and shall notify the person submitting the plan in writing that it has been:

- (A) approved,
- (B) approved with modification,
- (C) approved with performance reservations, or
- (D) disapproved.

(3) The Commission's disapproval, modification, or performance reservations of any proposed plan, shall entitle the person submitting the plan to an administrative hearing in accordance with the provisions of G. S. 150B-23.

(4) Subparagraph ~~(a)~~ (b) (3) of this Rule shall not apply to the approval or modification of plans reviewed by the Commission pursuant to G.S. 113A-61(c).

(5) Any plan submitted for a land disturbing activity for which an environmental document is required by the North Carolina Environmental Policy Act shall be deemed incomplete until a complete environmental document is available for review. The Commission shall promptly notify the person submitting the plan that the 30 day time limit for review of the plan pursuant to Subparagraph (b)(2) of this Rule shall not begin until a complete environmental document is available for review.

(c) Erosion and sedimentation control plans may also be disapproved unless they include an authorized statement of financial responsibility and ownership. This statement shall be signed by the person financially responsible for the land-disturbing activity or his attorney in fact. The statement shall include the mailing and street addresses of the principal place of business of the person financially responsible and of the owner of the land or their registered agents.

(d) ~~(b)~~ Local Government Approval

(1) Local Governments administering erosion and sedimentation control programs shall develop and publish procedures for approval of plans. Such procedures shall respect applicable laws, ordinances, and rules shall contain procedures for appeal consistent with the local government's organization and operations.



- (2) The secretary shall appoint such employee(s) of the department as he deems necessary to consider appeals from the local government's final disapproval or modification of a plan. Within 30 days following receipt of notification of the appeal, such departmental employee shall complete the review and shall notify the local government and the person appealing the local government's decision that the plan should be approved, approved with modifications, approved with performance reservations, or disapproved.
- (3) If either the local government or the person submitting the plan disagrees with the decision reached by an employee of the Department then he may appeal the decision to the Commission by filing notice within 15 days with the Director of the Division of Land Resources. The director shall make the proposed erosion control plan and the records relating to the local government's and departmental employees review, available to an appeals review committee consisting of three members of the Commission appointed by the chairman. Within 10 days following receipt of the notification of appeal, the appeals review committee shall notify the local government and the person submitting the plan of a place and time for consideration of the appeal, and shall afford both parties an opportunity to present written or oral arguments. The appeals review committee shall notify both parties of its decision concerning the approval, disapproval, or modification of the proposed plan within 30 days following such hearing.

who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

*Statutory Authority G.S. 113A-54(b); 113A-58; 113A-61.1.*

#### **.0024 DESIGN STANDARDS IN SENSITIVE WATERSHEDS**

(a) Uncovered areas in HQW zones shall be limited at any time to a maximum total area within the boundaries of the tract of 20 acres. Only the portion of the land-disturbing activity within a HQW zone shall be governed by this Rule. Larger areas may be uncovered within the boundaries of the tract with the written approval of the Director.

(b) Erosion and sedimentation control measures, structures, and devices within HQW zones shall be so planned, designed and constructed to provide protection from the runoff of the 25 year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agricultural Soil Conservation Service's "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(c) Sediment basins within HQW zones shall be designed and constructed such that the basin will have a settling efficiency of at least 70 percent for the 40 micron (0.04mm) size soil particle transported into the basin by the runoff of that two-year storm which produces the maximum peak rate of runoff as calculated according to procedures in the United States Department of Agriculture Soil Conservation Services "National Engineering Field Manual for Conservation Practices" or according to procedures adopted by any other agency of this state or the United States or any generally recognized organization or association.

(d) Newly constructed open channels in HQW zones shall be designed and constructed with side slopes no steeper than two horizontal to one vertical if a vegetative cover is used for stabilization unless soil conditions permit a steeper slope or where the slopes are stabilized by using mechanical devices, structural devices or other acceptable ditch liners. In any event, the angle for side slopes shall be sufficient to restrain accelerated erosion.

(e) Pursuant to G.S. 113A-57(3) provisions for a ground cover sufficient to restrain erosion must be provided for any portion of a land-disturbing

*Statutory Authority G.S. 113A-2; 113A-54; 113A-54(b); 113A-54(d)(2); 113A-60(a); 113A-61(b); 113A-61(c); 150B-23.*

#### **.0020 INSPECTIONS AND INVESTIGATIONS**

(a) The Commission, Department of Environment, Health, and Natural Resources or local government shall also have the power to require written statements, or the filing or reports under oath, concerning land disturbing activity.

(b) Inspection of sites shall be carried out by the staff of Department of Environment, Health, and Natural Resources or other qualified persons authorized by the Commission or Department of Environment, Health, and Natural Resources as necessary to carry out its duties under the Act.

(c) No person shall refuse entry or access to any authorized representative of the Commission

activity in a IIQW zone within 15 working days or 60 calendar days following completion of construction or development, whichever period is shorter.

Statutory Authority G.S. 113A-54(b); 113A-54(c)(1).

**.0025 BUFFER ZONE REQUIREMENTS**

(a) The 25 foot minimum width for an undisturbed buffer zone adjacent to designated trout waters shall be measured horizontally from the top of the bank.

(b) Where a temporary and minimal disturbance is permitted as an exception by G.S. 113A-57(1), land-disturbing activities in the buffer zone adjacent to designated trout waters shall be limited to a maximum of ten percent of the total length of the buffer zone within the tract to be distributed such that there is not more than 100 linear feet of disturbance in each 1000 linear feet of buffer zone. Larger areas may be disturbed with the written approval of the Director.

(c) No land-disturbing activity shall be undertaken within a buffer zone adjacent to designated trout waters that will cause adverse temperature fluctuations, as set forth in 15A NCAC 2B .0211 "Fresh Surface Water Classification and Standards", in these waters.

Statutory Authority G.S. 113A-54(b); 113A-54(c)(1); 113A-57(1).

**SUBCHAPTER 4C - SEDIMENTATION  
CONTROL CIVIL PENALTIES**

**.0007 PROCEDURES: NOTICES**

(a) Prior to the assessment of any civil penalty, notice of the violation shall be given the alleged violator(s) or his (their) agent(s) by registered or certified mail or other means reasonably calculated to give actual notice, describing the violation with reasonable particularity, specifying a time period for compliance and stating that upon failure to comply the person responsible for the violation shall become subject to the assessment of a civil penalty, provided that no time period for compliance need be given for failure to submit an erosion control plan for approval or for obstructing, hampering or interfering with an authorized representative while in the process of carrying out his official duties.

(b) If, after the allotted time period has expired, the violator has not completed corrective action, a civil penalty may be assessed from the date of receipt of the notice of violation. Notice of the assessment shall be by registered or certified mail

or other means reasonably calculated to give actual notice.

Statutory Authority G.S. 113A-54; 113A-64; 143B-10.

**SUBCHAPTER 4D - LOCAL ORDINANCES**

**.0003 REVISIONS TO APPROVED LOCAL ORDINANCES**

(a) The Commission shall revise the model ordinance as necessary and shall provide such revisions to all approved local programs within 30 days of the date of revision. Each local government shall incorporate said revisions in its local ordinance within eight months following their receipt. If local ordinance standards and provisions meet or exceed the required revisions the local government shall notify the Commission within 90 days of their receipt.

(b) The Commission shall only approve revisions upon determining that such revisions equal or exceed the standards of the model ordinance and have been adopted locally.

(c) The Commission shall review draft revisions undertaken by a local government within 60 days of their receipt and shall notify the local government of their adequacy or of any necessary corrections.

Statutory Authority G.S. 113A-54(d); 113A-60.

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*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10B .0115.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 7:00 p.m. on January 17, 1990 at Harnett County Office Building Auditorium, 102 E. Front Street, Lillington, N.C.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 2, 1990 to February 1, 1990. Such written comments must be delivered or mailed to the Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.*



CHAPTER 10 - WILDLIFE RESOURCES AND  
WATER SAFETY

SUBCHAPTER 10B - HUNTING AND  
TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0115 SHINING LIGHTS IN DEER AREAS

(c) No person shall, between the hours of one-half hour after sunset and one-half hour before sunrise, intentionally shine a light upon a deer or intentionally sweep a light in search of deer in the indicated portions of the following counties:

- (1) Alamance -- entire county;
- (2) Alexander -- entire county;
- (3) Alleghany -- entire county;
- (4) Anson -- entire county;
- (5) Ashe -- entire county;
- (6) Avery -- that portion south and east of Highway 221;
- (7) Burke -- entire county;
- (8) Cabarrus -- entire county;
- (9) Caldwell -- entire county;
- (10) Caswell -- entire county;
- (11) Catawba -- entire county;
- (12) Chatham -- entire county;
- (13) Clay -- entire county;
- (14) Cleveland -- entire county;
- (15) Cumberland -- entire county;
- (16) Davidson -- entire county;
- (17) Davie -- entire county;
- (18) Durham -- entire county;
- (19) Gaston -- entire county;
- (20) Guilford -- entire county;
- (21) Halifax -- entire county;
- (22) Harnett -- entire county;
- (23) ~~(22)~~ Henderson -- entire county;
- (24) ~~(23)~~ Hyde -- that part bounded on the north by a line running parallel with and 1000 yards in a northward direction from that part of SR 1304 that leads from Hodges' Fork to Rose Bay, on the east by the Mattamuskeet National Wildlife Refuge boundary, on the southeast by US 264, and on the west and southwest by a line running parallel with and 1000 yards in a west or southwest direction from the centerline of SR 1304;
- (25) ~~(24)~~ Iredell -- entire county;
- (26) ~~(25)~~ Johnston -- entire county;
- (27) ~~(26)~~ Lee -- entire county;
- (28) ~~(27)~~ Lincoln -- entire county;
- (29) ~~(28)~~ McDowell -- entire county;
- (30) ~~(29)~~ Mecklenburg -- entire county;
- (31) ~~(30)~~ Mitchell -- entire county;
- (32) ~~(31)~~ Northampton -- entire county;

- (33) ~~(32)~~ Person -- entire county;
- (34) ~~(33)~~ Polk -- entire county;
- (35) ~~(34)~~ Randolph -- entire county;
- (36) ~~(35)~~ Rockingham -- entire county;
- (37) ~~(36)~~ Rowan -- entire county;
- (38) ~~(37)~~ Rutherford -- entire county;
- (39) ~~(38)~~ Scotland -- that part lying west of US 401 north of Laurinburg and north of US 74 west of Laurinburg;
- (40) ~~(39)~~ Stanly -- entire county;
- (41) ~~(40)~~ Stokes -- entire county;
- (42) ~~(41)~~ Surry -- entire county;
- (43) ~~(42)~~ Transylvania -- entire county;
- (44) ~~(43)~~ Union -- entire county;
- (45) ~~(44)~~ Watauga -- entire county;
- (46) ~~(45)~~ Wilkes -- entire county;
- (47) ~~(46)~~ Yadkin -- entire county;
- (48) ~~(47)~~ Yancey -- entire county.

*Statutory Authority G.S. 113-134; 113-291.1; S.L. 1981, Ch. 410; S.L. 1981 (Second Session 1982), Ch. 1180.*

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10B .0116; 10C .0401; 10D .0002; 10I .0003 - .0005.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on January 16, 1990 at Room 386, Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 1, 1990 to January 31, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.*

CHAPTER 10 - WILDLIFE RESOURCES AND  
WATER SAFETY

SUBCHAPTER 10B - HUNTING AND  
TRAPPING

SECTION .0100 - GENERAL REGULATIONS

.0116 PERMITTED ARCHERY EQUIPMENT

(b) Only arrows with a fixed minimum broad-head width of seven-eighths of an inch and that do not mechanically open upon impact may be used for taking bear, deer, wild boar or wild turkey. Blunt-type arrow heads may be used in taking small animals and birds including, but not limited to, rabbits, squirrels, quail, grouse and pheasants. Poisonous, drugged, barbed, or explosive arrowheads may not be used for taking any game.

*Statutory Authority G.S. 113-134; 113-291.1(a).*

## SUBCHAPTER 10C - INLAND FISHING REGULATIONS

### SECTION .0400 - NONGAME FISH

#### .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line, rod and reel, trotline or set-hook. Nongame fishes may be taken by such hook and line methods at any time without restriction as to size limits or creel limits, except that no trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters. The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(b) Nongame fishes taken by hook and line methods or by licensed special devices may be bought and sold.

(c) Freshwater mussels may only ~~shall not~~ be taken ~~except~~ from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County.

*Statutory Authority G.S. 113-134; 113-272; 113-292.*

## SUBCHAPTER 10D - GAME LANDS REGULATIONS

#### .0002 GENERAL REGULATIONS REGARDING USE

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on

field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing ~~No. 2 shot~~ any size steel or non-toxic shot may be used on Croatan, Goose Creek and Gull Rock Game Lands while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

*Statutory Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306.*

## SUBCHAPTER 10I - ENDANGERED AND THREATENED SPECIES

#### .0003 ENDANGERED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed endangered species:

- (1) Cape fear shiner (*Notropis mekistocheilus*);
- (2) American peregrine falcon (*Falco peregrinus anatum*);
- (3) Carolina northern flying squirrel (*Glaucomys sabrinus coloratus*);
- (4) Bachman's warbler (*Vermivora bachmanii*);
- (5) Bald eagle (*Haliaeetus leucocephalus*);
- (6) Roseate tern (*Sterna dougallii dougallii*);
- (7) Eastern cougar (*Felis concolor cougar*);
- (8) Gray bat (*Myotis grisescens*);
- (9) Indiana bat (*Myotis sodalis*);
- (10) Ivory-billed woodpecker (*Campephilus principalis*);
- (11) Kirtland's warbler (*Dendroica kirtlandii*);

- (12) Leatherback turtle (Dermochelys coriacea);
- (13) Manatee (Trichechus manatus), when found in inland fishing waters;
- (14) Red cockaded woodpecker (Picoides borealis);
- (15) Shortnose sturgeon (Acipenser brevirostrum), when found in inland fishing waters;
- (16) Atlantic ridley turtle (Lepidochelys kempii);
- (17) Hawksbill turtle (Eretmochelys imbricata);
- (18) Tar river spiny mussel (Elliptio [canthyria] steinstansana);
- (19) Virginia big-eared bat (Plecotus townsendii townsendii);
- (20) Wood stork (Mycteria americana).

(1) Amphibians:

None Listed At This Time

(2) Birds:

(A) American peregrine falcon (Falco peregrinus anatum);

(B) Bachman's warbler (Vermivora bachmanii);

(C) Bald eagle (Haliaeetus leucocephalus);

(D) Ivory-billed woodpecker (Campephilus principalis);

(E) Kirtland's warbler (Dendroica kirtlandi);

(F) Red-cockaded woodpecker (Picoides borealis);

(G) Roscate tern (Sterna d. dougallii);

(H) Wood stork (Mycteria americana).

(3) Fish:

(A) Cape fear shiner (Notropis mekistocholas);

(B) Shortnose sturgeon (Acipenser brevirostrum), when found in inland fishing waters.

(4) Mammals:

(A) Carolina northern flying squirrel (Glaucomys sabrinus coloratus);

(B) Eastern cougar (Felis concolor cougar);

(C) Gray bat (Myotis grisescens);

(D) Indiana bat (Myotis sodalis);

(E) Manatee (Trichechus manatus), when found in inland fishing waters;

(F) Virginia big-eared bat (Plecotus t. townsendii).

(5) Mollusks:

Tar river spiny mussel (Elliptio [canthyria] steinstansana).

(6) Reptiles:

(A) Atlantic ridley turtle (Lepidochelys kempii);

(B) Hawksbill turtle (Eretmochelys imbricata);

(C) Leatherback turtle (Dermochelys coriacea).

(b) The following species of resident wildlife are designated as state-listed endangered species:

NONE LISTED AT THIS TIME

(1) Amphibians:

Green salamander (Aneides aeneus).

(2) Birds:

None Listed At This Time

(3) Fish:

None Listed At This Time

(4) Mammals:

None Listed At This Time

(5) Mollusks:

None Listed At This Time

(6) Reptiles:

(A) Eastern coral snake (Micrurus f. fulvius);

(B) Eastern diamondback rattlesnake (Crotalus adamanteus).

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

.0004 THREATENED SPECIES LISTED

(a) The following species of resident wildlife are designated as federally-listed threatened species:

(1) Spotfin chub (Ilybopsis monacha);

(2) Noonday land snail (Mesodon clarki nantahala);

(3) Green turtle (Chelonia mydas);

(4) Loggerhead turtle (Caretta caretta);

(5) American alligator (Alligator mississippiensis);

(6) Arctic peregrine falcon (Falco peregrinus tundrius);

(7) Dismal swamp southern shrew (Sorex longirostris fisheri);

(8) Piping plover (Charadrius melodus);

(9) Waccamaw silverside (Menidia extensa).

(1) Amphibians:

None Listed At This Time

(2) Birds:

(A) Arctic peregrine falcon (Falco peregrinus tundrius);

(B) Piping plover (Charadrius melodus).

(3) Fish:

(A) Spotfin chub (Ilybopsis monacha);

(B) Waccamaw silverside (Menidia extensa).

(4) Mammals:

Dismal swamp southern shrew (Sorex longirostris fisheri).

(5) Mollusks:

Noonday land snail (Mesodon clarki nantahala).



- (6) Reptiles:  
 (A) American alligator (Alligator mississippiensis);  
 (B) Green turtle (Chelonia mydas);  
 (C) Loggerhead turtle (Caretta caretta).  
 (b) The following species of resident wildlife are designated as state-listed threatened species:  
Eastern wood rat (Neotoma floridana floridana).  
 (1) Amphibians:  
 (A) Eastern tiger salamander (Ambystoma t. tigrinum);  
 (B) Wehrle's salamander (Plethodon wehrlei).  
 (2) Birds:  
None Listed At This Time  
 (3) Fish:  
None Listed At This Time  
 (4) Mammals:  
Eastern wood rat (Neotoma f. floridana).  
 (5) Mollusks:  
None Listed At This Time  
 (6) Reptiles:  
Bog turtle (Clemmys muhlenbergii).

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

#### .0005 SPECIAL CONCERN SPECIES LISTED

The following species of resident wildlife are designated as state-listed special concern species:

- (1) Water shrew (Sorex palustris punctulatus);  
 (2) Long-tailed shrew (Sorex dispar blitchi);  
 (3) Pygmy shrew (Sorex hoyi winnemana);  
 (4) Star-nosed mole (Condylura cristata parva);  
 (5) Southeastern bat (Myotis austroriparius);  
 (6) Keen's bat (Myotis keenii septentrionalis);  
 (7) Small-footed bat (Myotis l. liebi);  
 (8) Rafinesque's big-eared bat (Plecotus rafinesquii rafinesquii and P.r. macrotis);  
 (9) Brazilian free-tailed bat (Tadarida brasiliensis cynocephala);  
 (10) Eastern wood rat (Neotoma floridana haemitora and N.f. magister);  
 (11) Rock vole (Microtus chrotorrhinus carolinensis);  
 (12) Bog turtle (Clemmys muhlenbergii);  
 (13) Green salamander (Aneides aeneus).  
 (1) Amphibians:  
 (a) Carolina crawfish frog (Rana areolata capito);  
 (b) Crevice salamander (Plethodon longicrus);  
 (c) Dwarf salamander [silver morph] (Eurycea quadridigitata);  
 (d) Eastern hellbender (Cryptobranchus a. alleganiensis);  
 (e) Four-toed salamander (Hemidactylium scutatum);

- (f) Junaluska salamander (Eurycea junaluska);  
 (g) Longtail salamander (Eurycea l. longicauda);  
 (h) Mole salamander (Ambystoma talpoideum);  
 (i) Mountain chorus frog (Pseudacris brachyphona);  
 (j) Mudpuppy (Necturus maculosus);  
 (k) Neuse river waterdog (Necturus lewisi);  
 (l) River frog (Rana heckscheri);  
 (m) Weller's salamander (Plethodon welleri);  
 (n) Zigzag salamander (Plethodon dorsalis).  
 (2) Birds:  
 (a) Bachman's sparrow (Aimophila aestivalis);  
 (b) Bewick's wren (Thryomanes bewickii);  
 (c) Black-capped chickadee (Parus atricapillus);  
 (d) Black skimmer (Rhynchops niger);  
 (e) Brown pelican (Pelecanus occidentalis);  
 (f) Black vulture (Coragyps atratus);  
 (g) Cooper's hawk (Accipiter cooperi);  
 (h) Glossy ibis (Plegadis falcinellus);  
 (i) Golden-crowned kinglet (Regulus satrapa);  
 (j) Little blue heron (Egretta caerulea);  
 (k) Loggerhead shrike (Lanius ludovicianus);  
 (l) Northern saw-whet owl (Aegolius acadicus);  
 (m) Olive-sided flycatcher (Contopus borealis);  
 (n) Snowy Egret (Egretta thula);  
 (o) Tricolor heron (Egretta tricolor).  
 (3) Fish:  
None Listed At This Time  
 (4) Mammals:  
 (a) Brazilian free-tailed bat (Tadarida brasiliensis cynocephala);  
 (b) Eastern wood rat (Neotoma floridana haemitora and N.f. magister);  
 (c) Keen's bat (Myotis keenii septentrionalis);  
 (d) Long-tailed shrew (Sorex dispar blitchi);  
 (e) Pygmy shrew (Sorex hoyi winnemana);  
 (f) Rafinesque's big-eared bat (Plecotus r. rafinesquii and P.r. macrotis);  
 (g) Rock vole (Microtus chrotorrhinus carolinensis);  
 (h) Small-footed bat (Myotis l. liebi);  
 (i) Southeastern bat (Myotis austroriparius);  
 (j) Star-nosed mole (Condylura cristata parva);  
 (k) Water shrew (Sorex palustris punctulatus).  
 (5) Mollusks:  
None Listed At This Time  
 (6) Reptiles:  
 (a) Carolina pigmy rattlesnake (Sistrurus m. miliarius);  
 (b) Carolina salt marsh snake (Nerodia sipedon williamsi);



- (c) Diamondback terrapin (Malaclemys terrapin);
- (d) Eastern smooth green snake (Opheodrys v. vernalis);
- (e) Eastern spiny softshell (Apalone s. spinifer);
- (f) Mimic glass lizard (Ophisaurus mimicus);
- (g) Northern pine snake (Pituophis m. melanoleucus);
- (h) Outer banks kingsnake (Lampropeltis getulus sticticeps);
- (i) Stripeneck musk turtle (Sternotherus minor peltifer).

Statutory Authority G.S. 113-134; 113-291.2; 113-292; 113-333.

\* \* \* \* \*

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Wildlife Resources Commission intends to amend rule(s) cited as 15A NCAC 10C .0305.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 7:30 p.m.:*

*January 22, 1990  
Charlotte Mecklenburg Government Center  
Room 118  
600 E. 4th Street  
Charlotte, North Carolina*

*January 23, 1990  
The New Agricultural Building  
Pinehurst Avenue  
Carthage, North Carolina*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. In addition, the record of hearing will be open for receipt of written comments from January 5, 1990 to February 7, 1990. Such written comments must be delivered or mailed to the N.C. Wildlife Commission, 512 N. Salisbury St., Raleigh, NC 27611.*

## CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

## SUBCHAPTER 10C - INLAND FISHING REGULATIONS

### SECTION .0300 - GAME FISH

#### .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

##### (b) Exceptions

(8) The maximum combined number of black bass of all species that may be retained is eight fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is ~~12~~ 14 inches, ~~with no exception in Lake Lucas Marion in Moore County, in Reedy Creek Park lakes in Mecklenburg County, and in Currituck Sound and tributaries north of Wright Memorial Bridge; in North River and tributaries in Currituck and Camden Counties north of a line between Camden Point and the end of SR 1124; and in and west of Madison, Buncombe, Henderson and Polk Counties.~~ In B. Everett Jordan Reservoir a daily creel limit of four fish and a minimum size limit of 16 inches, with no exception, apply to largemouth bass. In Falls of Neuse Reservoir, east of SR 1004, Sutton Lake and Tuckertown Lake the daily creel limit for black bass is four fish, no black bass between the lengths of 12 inches and 16 inches may be retained, and the minimum size limit for black bass is 16 inches, except that the daily creel may contain two black bass of less than 12 inches in length. In John H. Kerr Reservoir and Lake Gaston the daily creel of five fish shall apply to black bass, provided that this limit shall become effective only when and if the State of Virginia imposes a like creel limit for black bass taken from those impoundments.

(11) The minimum size limit for all black bass is 18 inches in the following trophy bass lakes:

(A) Cane Creek Lake in Union County; ~~and where the creel may include two undersize bass;~~

(B) Lake Thom-A-Lex in Davidson County. ~~where the creel may not include any undersize bass.~~

Statutory Authority G.S. 113-134; 113-292; 113-304; 113-305.

## TITLE 21 - OCCUPATIONAL LICENSING BOARD

*Notice is hereby given in accordance with G.S. 150B-12 that the North Carolina Board for Licensing of Geologists intends to amend rules cited as 21 NCAC 21 .0107, .0301, .0302.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 11:00 a.m. on January 19, 1990 at First Floor Conference Room, Caswell Building, 3700 National Drive, Raleigh, North Carolina 27612.*

*Comment Procedures: Interested persons may present their views either orally or in writing at the hearing. Additionally, the record will be open for receipt of written comments until the hearing. Such written comments must be delivered or mailed to Mr. Stephen G. Conrad, N.C. Board for Licensing of Geologists, P.O. Box 27402, Raleigh, N.C. 27611.*

### CHAPTER 21 - BOARD OF GEOLOGISTS

#### SECTION .0100 - STATUTORY AND ADMINISTRATIVE PROVISIONS

##### .0107 FEES

(a) Completed application forms must be accompanied by the prescribed fee. Application fees will not be refunded regardless of Board approval or disapproval of the application. Prescribed fees shall be:

- (1) application forms for licensing as a geologist, including a copy of the Geologists Licensing Act and Rules: - \$ 5.00
- (2) application for license: - \$50.00
- (3) examination: - ~~\$25.00~~ \$50.00
- (4) application for license by comity: - \$50.00
- (5) biennial renewal of license: - \$70.00
- (6) biennial renewal of license of N. C. resident geologists practicing less than 15 days per year: - \$30.00
- (7) replacement of license: - \$10.00
- (8) application for reinstatement of license: - \$50.00
- (9) licensed geologist stamp and seal: cost plus - \$ 5.00

(b) All licenses will expire biennially on July 1. Biennial renewal fees received after July 1 and before September 1 of the year due shall be subject to the assessment of a late payment penalty of ten dollars (\$10.00).

(c) Licenses that have not been renewed by September 1st may only be renewed by filing a reinstatement application and submitting a reinstatement fee.

(d) Licenses that have been suspended under G.S. 89E-21 may be reinstated by filing a reinstatement application and paying the reinstatement fee.

*Statutory Authority G.S. 89E-5; 89E-8; 89E-10; 89E-12; 89E-13; 89E-21.*

### SECTION .0300 - LICENSING OF GEOLOGISTS

#### .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board is authorized to determine which colleges and universities are properly accredited, and which geologic science courses qualify for meeting the minimum requirements.

(b) References. ~~Three~~ Five letters of reference submitted to the Board which shall satisfy the Board as to the character, reputation, responsibility, integrity and competence of the applicant. These letters of reference must be submitted by licensed or qualified geologists or professional engineers. ~~No member of the Board shall act as a reference for any applicant for licensing. At least two of the five letters of reference must be submitted by licensed or qualified geologists who are familiar with the applicant's work in the field of geology.~~

(c) Written Examination. A written examination approved by the Board shall be required of all applicants. The passing grade on any written examination for licensing shall be established by the Board in advance of the examination. The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period. A person having a record of three failures will not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant must demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board will consider the total work experience record of the applicant. The Board will look for the applicant's ability to conduct geological work

in a satisfactory manner with little or no supervision. The Board is authorized to determine which colleges and universities are properly accredited and which geological science courses qualify for experience in the field of geology.

~~(d)~~ (e) Certificate by comity:

- (1) The Board, within its discretion, may grant a license, by comity, to a person holding a license or certificate in good standing of registration in geology from any legally constituted Board of examiners in another state whose licensing, registration and requirements are deemed to be equal or equivalent to those of this state.
- (2) To assure that the requirements of the other state are at least equivalent to those of this state, the applicant shall be required to show evidence of education and experience equal to those required of geologists licensed in this state who obtained a license by examination as set out in this Rule and Rule .0302 of this Section.

*Statutory Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11.*

#### **.0302 APPLICATION PROCEDURE**

(a) All applicants for licensing, except those applying under comity, are required to furnish with their applications the following:

- (1) A legible official copy of their college transcript(s), and verification of graduation sent directly from the institution to the Board;
- (2) A record of experience in the practice of geology, including any of the applicant's written reports, maps, published articles or other materials the Board determines are appropriate to document the applicant's experience as a geologist;
- (3) ~~Three~~ Five references as defined in Rule .0301 ~~(c)~~ (b) of this Section;
- (4) A notarized copy of a completed application form as prescribed by the Board; and
- (5) The application fee as prescribed in Rule .0107 of this Chapter.

(b) Applicants for licensing under comity shall submit an application form as prescribed by the Board along with the fee as provided in Rule .0107 of this Chapter. The Board may require the submittal of additional information.

(c) Applicants for reinstatement of an expired license shall submit a reinstatement application and the prescribed fee in Rule .0107 of this Chapter.

(d) Applicants for reinstatement of a revoked or suspended license shall submit such informa-

tion as is required by the Board, on a case-by-case basis, to determine their eligibility for reinstatement, and shall submit the fee as provided by Rule .0107 of this Chapter.

(e) Applicants for renewal of license who practice geology less than 15 days per year must submit a notarized affidavit that they have practiced geology in North Carolina less than 15 days during the past year and that they will practice less than 15 days in each of the coming two years. If a licensed geologist in fact practices 15 or more days in either year in North Carolina, he shall submit to the Board the balance of the fee prescribed for regular license renewal in Rule .0107 of this Chapter.

*Statutory Authority G.S. 89E-8; 89E-9; 89E-11.*

### **TITLE 26 - OFFICE OF ADMINISTRATIVE HEARINGS**

*Notice is hereby given in accordance with G.S. 150B-12 that the Office of Administrative Hearings intends to amend rule(s) cited as 26 NCAC 1 .0001; 26 NCAC 2B .0103-.0104; 26 NCAC 3 .0008, .0019, .0022, .0026, and .0030.*

*The proposed effective date of this action is April 1, 1990.*

*The public hearing will be conducted at 10:00 a.m. on January 16, 1990 at Hearing Room 3, Lee House, 422 North Blount Street, Raleigh, NC.*

*Comment Procedures: Comments may be submitted in person or in writing at the public hearing or in writing prior to January 16, 1990 to Elaine R. Steinbeck, Agency Paralegal, P. O. Drawer 11666, Raleigh, NC.*

#### **CHAPTER 1 - GENERAL**

##### **.0001 COST FOR COPIES**

(a) Copies in looseleaf form of any public documents filed in the Office of Administrative Hearings are available at a cost of two dollars and fifty cents (\$2.50) for up to ten pages and fifteen cents (\$0.15) per page for each page in excess of ten.

(b) Certified copies of any public document filed in the Office of Administrative Hearings are available at a cost of one dollar (\$1.00) per certification in addition to the copying cost set out in Paragraph (a) of this Rule.



(c) Transcripts or tapes are available of contested case hearings. Reference should be made to Rule 26 NCAC 3 .0022 for procedures for requesting and costs of transcripts or tapes.

*Statutory Authority G.S. 150B-62(b); 150B-63(f).*

## CHAPTER 2 - RULES DIVISION

### SUBCHAPTER 2B - NORTH CAROLINA REGISTER

#### SECTION .0100 - PUBLICATION

##### .0103 SUBMISSION AND PUBLICATION SCHEDULE

(a) In order to be acceptable for publication, submissions for proposed administrative rules and executive orders shall be submitted to the Office of Administrative Hearings by the closing date for the issue as determined under Paragraph (b) of this Rule.

(b) The North Carolina Register will be published on the first ~~and fifteenth~~ of each month if the first ~~or fifteenth~~ of the month is not a Saturday, Sunday or State holiday for employees mandated by the State Personnel Commission. If the first ~~or fifteenth~~ of any month is a Saturday, Sunday or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month closest to (either before or after) the first ~~or fifteenth~~ respectively that is not a Saturday, Sunday or holiday for State employees. The last day for filing for any issue of the North Carolina Register is 15 days before the issue date excluding Saturdays, Sundays and holidays for State employees, except that the last date for electronic filing is ten days before the issue date excluding Saturdays, Sundays and holidays for State employees. In computing the time prescribed or allowed by this Rule, the day of publication of the North Carolina Register is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday or State holiday. A half holiday shall be considered as other days and not as a holiday. A table of publication deadlines and schedules to include the issue date, last day for filing, last day for electronic filing, earliest date for public hearing, earliest date for adoption by the agency, and earliest effective date for at least the next 12 issues will be published in each issue of the North Carolina Register.

*Statutory Authority G.S. 150B-60; 150B-63.*

##### .0104 AVAILABILITY OF THE NORTH CAROLINA REGISTER

The North Carolina Register is published ~~twice~~ monthly by the Office of Administrative Hearings and is available at a cost of one hundred and five dollars (\$105.00) per year subscription. Requests for subscriptions should be directed to the Office of Administrative Hearings, P.O. Drawer 11666, Raleigh, N. C. 27604, (919) 733-2678.

*Statutory Authority G.S. 150B-63.*

## CHAPTER 3 - HEARINGS DIVISION

##### .0008 PREHEARING CONFERENCE: NOTICE

(a) The purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations in regard to foundations for testimony or exhibits, to obtain stipulations of agreement on nondisputed facts or the application of particular laws, to consider the proposed witnesses for each party, to identify and exchange documentary evidence intended to be introduced at the hearing, to determine deadlines for the completion of any discovery, to establish hearing dates and locations if not previously set, to consider such other matters that may be necessary or advisable and, if possible, to reach a settlement without the necessity for further hearing. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(b) Upon the request of any party or upon the administrative law judge's own motion, the administrative law judge may hold a prehearing conference prior to a contested case hearing. The administrative law judge may require the parties to file prehearing statements in accordance with Rule .0004 of this Chapter. A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the administrative law judge. ~~The administrative law judge shall give the parties not less than 15 days notice before the scheduled date of a prehearing conference.~~ Venue for purposes of a prehearing conference shall be determined in accordance with G.S. 150B-24.

*Statutory Authority G.S. 150B-33(b)(4), (5).*

##### .0019 RIGHTS AND RESPONSIBILITIES OF PARTIES

(a) All parties shall have the right to present evidence, rebuttal testimony, and argument with

respect to the issues of law and policy, and to cross-examine witnesses, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence.

(b) A party shall have all evidence to be presented, both oral and written, available on the date for hearing. Requests for subpoenas, depositions, or continuances shall be made within a reasonable time after their need becomes evident to the requesting party. In cases when the hearing time is expected to exceed one day, the parties shall be prepared to present their evidence at the date and time ordered by the administrative law judge or agreed upon at a prehearing conference.

(c) The administrative law judge shall send copies of all orders or decisions to all parties simultaneously. Any party sending a letter, exhibit, brief, memorandum, or other document, ~~except a request for a subpoena,~~ to the administrative law judge shall simultaneously send a copy to all other parties.

(d) A party need not be represented by an attorney. If a party has notified other parties of that party's representation by an attorney, all communications shall be directed to that attorney.

(e) With the approval of the administrative law judge, any person may offer testimony or other evidence relevant to the case. Any nonparty offering testimony or other evidence may be questioned by parties to the case and by the administrative law judge.

*Statutory Authority G.S. 150B-25(c), (d).*

#### .0022 OFFICIAL RECORD

The official record of a contested case is available for public inspection upon reasonable request. An administrative law judge may, upon good cause shown and consistent with law, order part or all of an official record sealed.

(1) The official record shall be prepared in accordance with G.S. 150B-37(a).

(2) Contested case hearings are recorded either by a four-track recording system or a professional court reporter using stenomask or stenotype. ~~All costs incurred when using a professional court reporter shall be divided pro rata among the party(ies) requesting a transcript.~~

(a) Transcript costs incurred shall be divided equally among the party(ies) requesting a transcript;

(b) Any other costs incurred when using a professional court reporter shall be divided equally among the requesting party(ies);

(c) A 24 hour cancellation notice is required in all cases. The party(ies) responsible for the cancellation shall be liable for any cancellation fees.

(3) Transcripts of proceedings during which oral evidence is presented will be made only upon request of a party. The requesting party shall pay the cost of such transcript or copy thereof that the party orders and this cost shall include the cost of an original for the Office of Administrative Hearings. An attorney requesting a transcript on behalf of a party is a guarantor of payment of the cost. Cost shall be determined under supervision of the Chief Administrative Law Judge who, in cases deemed appropriate by him, may require an advance security deposit to cover the prospective cost. The security deposit shall be applied to the actual cost and any excess shall be returned to the party which submitted it.

(4) Copies of tapes are available upon written request at a cost of three dollars (\$3.00) per tape.

(5) Copies of OAH Hearings tapes or Non-OAH Certified transcripts therefrom are not part of the official record.

**Note:** Rule 5.3(B) of the Rules of Professional Conduct permit an attorney to advance or guarantee expenses of litigation provided the client remains ultimately liable for such expenses.

*Statutory Authority G.S. 150B-37; 150B-63(f).*

#### .0026 ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION

(a) Except as provided in 26 NCAC 3 .0030, an administrative law judge shall issue a recommended decision or order in a contested case within 45 days after the later of the date the administrative law judge receives all proposed findings of fact and written arguments submitted by the parties and the date the contested case hearing ends. The administrative law judge shall serve a copy of the decision on each party. ~~Service shall be in the manner specified in 26 NCAC 3 .0009(b).~~ When an administrative law judge issues a recommended decision, the Office of Administrative Hearings shall promptly forward the official record in the case to the agency making the final decision.

(b) A recommended decision shall be based exclusively on:

- (1) competent evidence and arguments presented during the hearing and made a part of the official record;
- (2) stipulations of fact;
- (3) matters officially noticed;

- (4) proposed findings of fact and written arguments submitted by the parties under G.S. 150B-34(b); and
  - (5) other items in the official record that are not excluded by G.S. 150B-29(b).
- (c) A recommended decision shall fully dispose of all issues required to resolve the case and shall contain:
- (1) an appropriate caption;
  - (2) the appearances of the parties;
  - (3) a statement of the issues;
  - (4) references to specific statutes or rules at issue;
  - (5) findings of fact;
  - (6) conclusions of law based on the findings of fact and applicable constitutional principles, statutes, rules, or federal regulations;
  - (7) in the discretion of the administrative law judge, a memorandum giving reasons for his findings of fact and conclusions of law;
  - (8) a statement identifying the agency that will make the final decision; and
  - (9) a statement that each party has the right to file exceptions to the recommended decision with the agency making the final decision and has the right to present written arguments on the decision to the agency making the final decision.

(d) For good cause shown, the chief administrative law judge may extend the 45-day time limit for issuing a recommended decision. An administrative law judge who needs an extension must submit a request for extension to the chief administrative law judge before the 45-day period has expired.

*Statutory Authority G. S. 150B-34.*

#### **.0030 FINAL DECISIONS IN CONTESTED CASES**

~~An administrative law judge shall enter a final decision in a contested case:~~

- ~~(1) When he determines that the Office of Administrative Hearings lacks jurisdiction;~~
- ~~(2) When he dismisses a case based on the authority in G.S. 1A-1 or in this Chapter;~~
- ~~(3) When he determines that a rule is void as applied and there are no issues of fact to be determined; or~~
- ~~(4) In deferred cases as provided in G.S. 7A-759.~~

A copy of a final decision issued by an administrative law judge shall be served on each party. Service shall be in the manner specified in 26 NCAC 3 .0009(b).

*Statutory Authority G.S. 150B-36.*



*The List of Rules Codified is a listing of rules that were filed to be effective in the month indicated.*

*Rules filed for publication in the NCAC may not be identical to the proposed text published previously in the Register. Please contact this office if you have any questions.*

*Adopted rules filed by the Departments of Correction, Revenue and Transportation are published in this section. These departments are not subject to the provisions of G.S. 150B, Article 2 requiring publication in the N.C. Register of proposed rules.*

*Upon request from the adopting agency, the text of rules will be published in this section.*

*Punctuation, typographical and technical changes to rules are incorporated into the List of Rules Codified and are noted as \* Correction. These changes do not change the effective date of the rule.*

## TITLE 5 - DEPARTMENT OF CORRECTION

### CHAPTER 2 - DIVISION OF PRISONS

#### SUBCHAPTER 2F - CUSTODY AND SECURITY

##### SECTION .2400 - KEY CONTROL

###### .2401 PURPOSE

The purpose of this policy is to promote public safety through the safe and secure operation of facilities in the Division of Prisons by ensuring that all facilities adopt regulations for the control of keys and locks. These regulations will enable correctional staff to maintain effective security through control of all doors, gates, grills and other locking devices that comprise physical plant security both inside and outside of the perimeter. This policy will ensure that correctional staff will have total command of all keys and locking devices supplies, equipment and storage areas that support the key control program. In addition, this policy will promote safety by ensuring that in case of fire or other emergency, exit keys will be readily accessible to designated correctional staff.

*History Note: Statutory Authority G.S. 148-11; Eff. January 1, 1990.*

###### .2402 RESPONSIBILITY

(a) The Superintendent/Institution Head is responsible for developing key and lock control procedures for the correctional facility. Institutional procedures regarding key control must be clearly written and available for staff to reference but inmates must not have access to these procedures or to record keeping systems that support them.

(b) The Assistant Superintendent is responsible for ensuring that key control procedures are consistently enforced and audited to assure safe operation of the correctional facility.

(c) The Superintendent shall designate a key and lock control officer who is responsible for the coordination of Locksmiths, inventory, record keeping, making of keys, ordering of keys, issuance of keys, storage of keys, numbering of keys, and any other tasks that are related to key and lock control.

(d) All correctional employees are responsible for safe, secure, and effective key and lock control management practices. Good key control is a system that every staff member must learn and practice. Its fundamentals must be incorporated into every facility's operations and every staff member's work habits.

*History Note: Statutory Authority G.S. 148-11; Eff. January 1, 1990.*

###### .2403 PROCEDURES

Facility key control procedures is a confidential document and is subject to an annual review to ensure that procedures remain consistent with day to day operation requirements. Inmates should not be permitted to establish any base of information about the facility's key control system or locking devices. Facility key control procedures must contain the following elements:

- (1) Descriptions and Categories of Keys - Procedures must clearly define various categories of keys used in the facility so that staff are aware of different accountability requirements for each category. Key categories generally include the following:
  - (a) Master Keys: Cut so that one key may actuate more than one locking device in a series of locks from a single manufacturer.
  - (b) Security Keys: In the possession of unauthorized persons, these could facilitate an escape or jeopardize the security of the institution, or the safety of employees, visitors, or inmates. Immediate remedial action is necessary if a security key is lost, compromised, or missing.

- (i) Emergency Keys: Keys maintained on key rings and kept separate from all regular-issue keys. They provide prompt access to all parts of the institution during fires, disturbances, evacuation, or other urgent situations.
    - (ii) Restricted Keys: Allow access to sensitive areas of the institution. Special authorization must be obtained before they are issued to anyone other than the employee designated to draw them on a regular basis.
  - (c) Non-security Keys: Do not require immediate security response if lost or stolen.
  - (d) Vehicle Keys: Typically operates state owned vehicles including tractors and other specialized machines located inside or outside the perimeter of the facility.
  - (e) Inactive Keys: Keys no longer used but which are retained as spares and backups for active locks or spare locks. These are also keys maintained separately for other purposes, including storage for other institutions within the system.
  - (f) Pattern Keys: Keys from which all other keys for a particular lock or series of locks are cut. They are maintained separately from all other spare or blank keys.
- (2) Key Issue System - Facility key control procedures must include a description of the key issue system. The key issue system should describe centralized points from which keys are issued with the centralized location being secure and not accessible to inmates. The system must require employee accountability as keys are issued from a central location or exchanged between employees as post assignments are changed. The key issue system should accommodate at least the following:
- (a) Key Boards as required;
  - (b) Separate handling of state vehicle keys;
  - (c) Provisions for the permanent issue to an individual or to a post of selected keys;
  - (d) Actions required by employees who lose or break keys;
  - (e) Compatibility of key issue procedures with respective post orders; and
  - (f) A Key Issue Log.
- (3) Key Handling - Procedures should specify appropriate methods of the handling of keys by correctional staff. Key handling procedures should include at least the following:
- (a) Keys should be carried and used as inconspicuously as possible;
  - (b) Keys should be securely carried;
  - (c) Accountability of keys should be checked and logged when keys are drawn or passed from one employee to another;
  - (d) Correctional staff should avoid reference to key numbers and other identifying information in the presence of inmates;
  - (c) Keys should never be thrown from one staff member to another or slid from one point to another across a desk or floor;
  - (f) Keys should never be left in locks or used to lift or pull open a lockable door;
  - (g) Force should not be used to operate locks. If the lock does not function easily, it should be reported and repaired; and
  - (h) Inmates should never be allowed to handle security keys. Inmate management of any other keys should be minimized to the greatest extent possible.
- (4) Restricted Key Use - Restricted key use procedures shall be established. Restricted keys should be issued as needed only rather than on a permanent basis. Restricted key use procedures should apply to the following sections of the facility:
- (a) Armory and or gun locker;
  - (b) Inmate Records Office;
  - (c) Property storage rooms;
  - (d) Personnel records storage areas;
  - (e) Lock shop or other key or lock storage areas;
  - (f) Other areas designated by the facility superintendent as having special security requirements;
  - (g) Drug Storage:
    - (i) Licensed Pharmacy - G.S. 9-85.6 (ACCESS TO DRUG INVENTORY) requires that a licensed pharmacy manager shall have complete authority and control of all keys to locked drug cabinets in the pharmacy. The pharmacy manager is accountable to provide security and placing reasonable restrictions on access to the pharmacy area.
    - (ii) Drug Cabinets - Correctional health care professionals are authorized for the permanent issue of keys to locked drug cabinets and locked drug storage boxes. Keys to the areas in Subparagraphs (4)(a) through (4)(g)(ii) should be issued only to authorized staff and only after supervisory approval. A specific record shall be required to document the issue of restricted keys.
- (5) Emergency Key System - Key control procedures shall provide for clear instructions pertaining to the handling of emergency keys. Emergency key procedures should include at least the following:
- (a) Maintenance of emergency keys in a separate section or separate key board than other keys;

- (b) A duplicate set of emergency keys to be kept in an outside armory or tower;
  - (c) The rotation of emergency keys to ensure that they are serviceable at all times;
  - (d) Regular use of emergency keys in emergency locking devices to ensure serviceability of locking devices at all times;
  - (e) Assignment of emergency keys to staff necessary to affect timely evacuation of dormitory housing areas; and
  - (f) A method of coding or identifying emergency keys for quick identification by sight and touch during emergency situations.
- (6) **Key Inventory** - Key control procedures must provide for a current inventory of all keys and key blanks. The maintenance of this inventory will be the responsibility of the key and lock control officer. The key and lock control officer will document the inventory on a monthly basis. Any and all changes effecting the inventory in any manner must be authorized by the Superintendent. Keys, key blanks, and locks will be inventoried as to number, date issued out, ring location, etc. Keys or locks lost or destroyed will be logged in a similar manner.
- (7) **Record Keeping** - Key control procedures require accurate records of key and locking devices. A key control record system should include at least the following:
- (a) Inventory of all keys and key blanks;
  - (b) Appropriate key issuance logs;
  - (c) Records of lost, damaged or replaced locks and keys;
  - (d) Continuous records of facility keying systems so that rationale for keying schemes and modification to keying schemes is available for review.
- (8) **Auditing** - Facility key control procedures must require that a yearly audit be performed by the Superintendent. Annual audits must be reviewed and approved by areas administrators for field commands and by command managers for specialized commands.
- (9) **Training** - Key control procedures should require thorough staff training. The Assistant Superintendent should ensure that correctional staff receive the required initial training and regular refresher training. Training priorities should be provided to supervisory personnel and control center officers and other staff who are regularly involved in the issuance and management of keys.

*History Note: Statutory Authority G.S. 148-11; Eff. January 1, 1990.*

#### **.2404 OTHER REQUIREMENTS**

(a) Each facility's key control procedures must include operational procedures to be followed in the event of a:

- (1) Lost key ring;
- (2) Lost individual key;
- (3) Broken key;
- (4) Broken lock.

(b) All facilities will establish procedures that require employee responsibility and accountability for the management and control of their personal keys.

(c) Any employee taking a key away from the facility inadvertently shall be contacted and required to return the key to the institution promptly. Any employee who discovers that he or she has taken a key from the facility shall immediately notify the facility and return the key.

(d) Security locks and doors when not in use will be locked at all times. No security padlock should ever be left hanging without being locked closed in a manner that it cannot be removed.

(e) Any lock shops that are developed as a result of key control procedures should be located outside the secure perimeter so that inmates have no access to them.

(f) When security keys are lost or misplaced, proper security precautions must be taken to preclude use of the keys for unauthorized access or escape from the facility by inmates.

(g) The Superintendent is responsible for the security of the facility's safe combination.

(h) Key Control Procedures must be compatible with facility emergency plans in order to expedite staff response to emergency circumstances.

(i) Inmates' visitors should be discouraged from bringing personal keys into the correctional facility.

*History Note: Statutory Authority G.S. 148-11; Eff. January 1, 1990.*

### **TITLE 17 - DEPARTMENT OF REVENUE**

#### **CHAPTER 1 - DEPARTMENTAL RULES**

##### **SUBCHAPTER 1C - GENERAL ADMINISTRATION**

#### **SECTION .0400 - INTEREST REQUIREMENTS**

##### **.0402 ESTABLISHED INTEREST RATES**

(a) For the calendar years 1978 and 1979, the Secretary of Revenue under authority of Subsection (i) of G.S. 105-241.1 has established an interest rate of six percent per annum in conformance with the adjusted rate established under Section 6621 of the United States Internal Re-



venue Code. The computation shall be at the rate of one-half percent per month or fraction thereof.

(b) For the calendar years 1980 and 1981, the Secretary of Revenue under authority of Subsection (i) of G.S. 105-241.1 has established an interest rate of twelve percent per annum in conformance with the adjusted rate established under Section 6621 of the United States Internal Revenue Code. The computation shall be at the rate of one percent per month or fraction thereof.

(c) For the calendar year 1983, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 29, 1982 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(d) For the calendar year 1984, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 29, 1983 and interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(e) For the calendar year 1985, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 19, 1984 an interest rate of 9 percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(f) For the calendar year 1986, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on October 25, 1985 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(g) For the calendar year 1987, the Secretary of Revenue under the authority of Subsection (i) of G.S. 105-241.1 has established on November 18, 1986 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(h) For the calendar year 1988, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 30, 1987 an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(i) For the calendar year 1989, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 18, 1988, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof.

(j) For the period January 1, 1990 through June 30, 1990, the Secretary of Revenue under the authority of subsection (i) of G.S. 105-241.1 has established on November 20, 1989, an interest rate of nine percent per annum. The computation shall be at the rate of three-fourths percent per month or fraction thereof. This rate will remain in effect until a new rate is established.

*History Note: Statutory Authority G.S. 105-241.1; 105-262;  
Eff. November 9, 1977;  
Amended Eff. January 1, 1990; January 1, 1989;  
February 1, 1988; January 1, 1987.*

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12	Justice, Department of
13	Labor, Department of
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16	Public Education, Department of
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18	Secretary of State, Department of
19A	Transportation, Department of
20	Treasurer, Department of State
*21	Occupational Licensing Boards
22	Administrative Procedures
23	Community Colleges, Department of
24	Independent Agencies
25	State Personnel, Office of
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21	Geologists, Board of
22	Hearing Aid Dealers and Fitters Board
26	Landscape Architects, Licensing Board of
28	Landscape Contractors, Registration Board of
31	Marital & Family Therapy Certification Board
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64	Speech and Language Pathologists and Audiologists, Board of Examiners of
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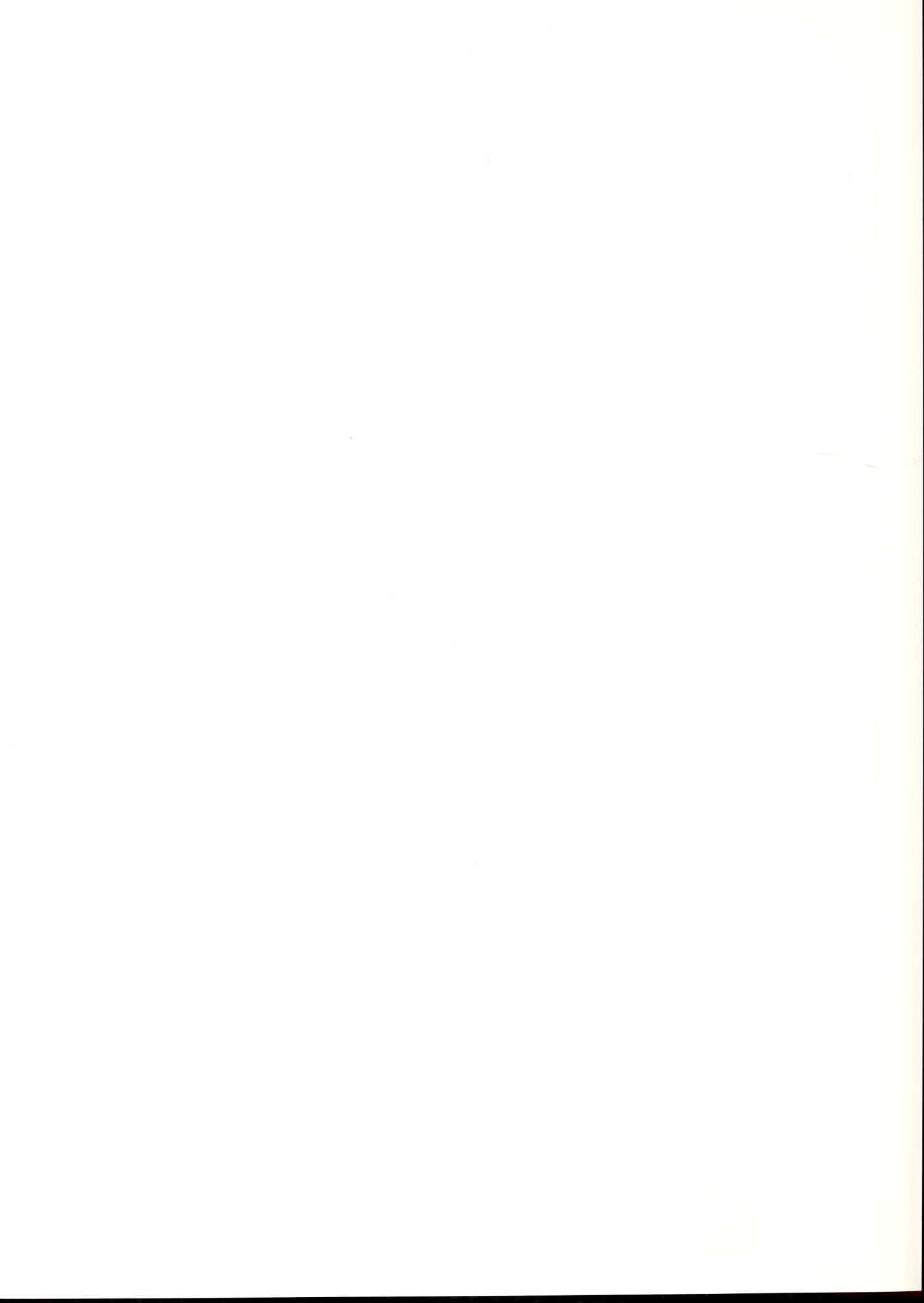
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